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**Zakat Distribution for Handling Transgender in Indonesia:
A Perspective of *Maṣlāḥah Mursalah***

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Abstract: This study focuses urgent issue directly related to whether the LGBT community is eligible as a *mustahik* right holder (zakat recipient) under Islamic law. This study is a normative legal study using the *maṣlāḥah mursalah* approach. The data analyzed is literature from books of fiqh scholars, textbooks, scientific journals, and other sources. Result of this study shows that Islam can regulate the management of zakat assets through the socio-economic empowerment of the people, preventing wealth accumulation in one group and reducing poverty. *Mustahik*, previously limited to short-term goals and institutional charity, now appears to have long-term benefits, including reducing poverty and empowering the community's economy. *Mustahik* is also useful for marginalized people, people with disabilities, and people experiencing moral and social deprivation, including mental health. The fact that the spread of this group is not limited to social media, but has also spread to campuses, schools, and being part of modern lifestyle needs urgent responses from various stakeholders, particularly in distributing zakat for LGBT community in Indonesia. The LGBT group is a legal reality that arises due to psychological and medical factors and entities caused by deviant associations. This research contributes to the Indonesian government's strategic steps to address the LGBT through zakat empowerment. So that in this way the group slowly through rehabilitation using zakat they experience awareness about life behavior that is in accordance with Islamic law in a dignified way.

Keywords: Zakat, transgender, LGBT, zakat distribution, *maṣlāḥah mursalah*

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Abstrak: Penelitian ini bertujuan mengkaji isu mendesak berkaitan langsung dengan sejauh mana komunitas LGBT memenuhi syarat sebagai pemegang hak mustahik (penerima zakat) menurut hukum Islam. Kajian ini merupakan studi hukum normatif dengan memakai pendekatan *maṣlāḥah mursalah*. Data yang dianalisis adalah literatur dari kitab-kitab ulama *fiqh*, buku teks, jurnal ilmiah, dan sumber lainnya. Hasil penelitian ini menunjukkan bahwa hukum Islam dapat mengatur pengelolaan aset zakat melalui pemberdayaan sosial ekonomi masyarakat, mencegah penumpukan kekayaan dalam satu kelompok dan mengurangi kemiskinan. Mustahik, yang sebelumnya terbatas pada tujuan jangka pendek dan amal kelembagaan, sekarang tampaknya memiliki manfaat jangka panjang, termasuk mengurangi kemiskinan dan memberdayakan ekonomi masyarakat. Mustahik juga berguna bagi kaum marjinal, penyandang disabilitas, dan orang-orang yang mengalami perampasan moral dan sosial, termasuk kesehatan mental. Fakta bahwa penyebaran kelompok ini tidak terbatas pada media sosial, tetapi juga telah menyebar ke kampus-kampus, sekolah, dan menjadi bagian dari gaya hidup modern membutuhkan tanggapan mendesak dari berbagai pemangku kepentingan, terutama dalam mendistribusikan zakat untuk komunitas LGBT di Indonesia. Kelompok LGBT merupakan realitas hukum yang muncul disebabkan oleh faktor psikologis dan medis serta entitas yang disebabkan oleh pergaulan yang menyimpang. Penelitian ini berkontribusi pada langkah strategis pemerintah Indonesia untuk mengatasi LGBT melalui pemberdayaan zakat. Sehingga dengan demikian kelompok tersebut perlahan melalui rehabilitasi dengan menggunakan zakat mereka mengalami kesadaran tentang perilaku kehidupan yang sesuai dengan hukum Islam dengan cara yang bermartabat.

Kata Kunci: Zakat, transgender, LGBT, distribusi zakat, *maṣlāḥah mursalah*

Introduction

In Islam, every command is about the performance of worship, including zakat, which contains wisdom and subtleties.¹ This type of worship serves *ukhrawi* (vertical) and worldly (horizontal, social) functions.² The first function of zakat is to clean one's wealth and soul (*fiṭrah*). A person who has distributed a portion of his fortune to others who are eligible means he has fulfilled His commands. Second, zakat is one of the means to strengthen human relations.³ It is mainly related to the

¹ Harun Şencal, "An Analysis of Institutionalization of Societal Relationships from the Perspective of Islamic Economics," *Cumhuriyet İlahiyat Dergisi* 25, No. 2 (2021), p. 661-677.

² Konstantinos Retsikas, "Reconceptualising Zakat in Indonesia: Worship, Philanthropy, and Rights," *Indonesia and the Malay World* 42, No. 124 (2014), p. 337-357.

³ Osman Taştekin, "Kur'an'da İnfak Kavramı Bağlamında Sosyal Yardımlaşma," *Cumhuriyet İlahiyat Dergisi* 25, No. 1 (2021), p. 217-238.

extent to which its use serves as a control mechanism to reduce social imbalances between the rich and the poor.⁴⁵

Zakat, on the one hand, and prayer, as a form of *ukhrawi* servitude, on the other, are both mentioned repeatedly in the Qur'an in the social function (*hablum minan nas*).⁶ Hidayat found the command to pray coupled with paying zakat in the Qur'an up to 27 times.⁷ Some scholars believe they are up to 82 times.⁸ While Al-Baqi⁹ stated that the command to pray is mentioned 99 times in the Qur'an, Zakat is mentioned 32 times separately.¹⁰ The pairing of the two obligatory commands in the Islamic pillars demonstrates that the two have a very close relationship.¹¹ The term "Zakat" is derived from the Arabic word *zakka*, which denotes "blessing, growth, cleanliness, and goodness." Ibn Manzhur, *Lisanul 'Arab* indicates that "zakat" in Arabic means "holy, growing, blessed and commendable."¹² Similarly, al-Ma'lufi stated in *al-Munjid fi al-Lughah wa al-A'lam* that zakat has a similar meaning.¹³ Terminologically, al-Qardhawi in the Zakat Law states that zakat is a certain amount of wealth that Allah SWT requires to be given to eligible people.¹⁴ In social development, identifying those referred to as "owners of recipient rights" has various meanings.¹⁵

However, the fact shows that the concept of *mustahik* in the context of zakat needs to be re-examined for responding modern life, such as increasing number of Lesbian, Gay, Bisexual, and Transgender (*Lebian, Gay, Biseksiual dan Transgender/LGBT*) in society. Accordingly, cautious thinking in responding to the

⁴ Asep Saepudin Jahar, "Marketing Islam through Zakat Institutions in Indonesia," *Studia Islamika* 22, No. 3 (2015), p. 405-442.

⁵ David Tittensor, et.al., "Understanding Islamic Aid Flows to Enhance Global Humanitarian Assistance," *Contemporary Islam* 12, No. 2 (2018), p. 193-210.

⁶ Muhammad Chirzin, *Kamus Pintar Al-Qur'an* (Jakarta: Gramedia Pustaka Utama, 2011).

⁷ Rachmat Taufiq Hidayat, *Khazanah Istilah Al-Quran* (Bandung: Mizan, 1994).

⁸ Hikmat Kurnia and A. Hidayat, *Panduan Pintar Zakat* (Jakarta: Qultum Media, 2008).

⁹ Muhammad Fuad abd al-Baqi, *Mu'jam Al-Mufahras Li Alfaz Al-Qur'an Al-Karim* (Jakarta: Pustaka Wahdan, 1981).

¹⁰ Jejen Musfah, *Indeks Al-Qur'an Praktis* (Jakarta: Hikmah, 2007).

¹¹ Qurroh Ayuniyyah et al., "The Impact of Zakat in Poverty Alleviation and Income Inequality Reduction from the Perspective of Gender in West Java, Indonesia," *International Journal of Islamic and Middle Eastern Finance and Management* 15, No. 5 (2022), p. 924-942.

¹² Ibn Manzhur, *Lisanul 'Arab Al-Muhith* (Beirut: Darul Fikr, 1972).

¹³ Abu Luwis al-Ma'lufi, *Al-Munjid Fi Al-Lughah Wa Al-A'lam* (Beirut: Dar al-Masyriq, 1996).

¹⁴ Yusuf al-Qardhawi, *Hukum Zakat* (Jakarta: Pustaka Litera Antar Nusa, 1993).

¹⁵ Musa Yusuf Owoyemi, "Zakat Management: The Crisis of Confidence in Zakat Agencies and the Legality of Giving Zakat Directly to the Poor," *Journal of Islamic Accounting and Business Research* 11, No. 2 (2020), p. 498-510. Shaikh Hamzah Abdul Razak, "Zakat and Waqf as Instrument of Islamic Wealth in Poverty Alleviation and Redistribution," *International Journal of Sociology and Social Policy* 40, No. 3/4 (2020), p. 249-266.

notion of *mustahik* in its application is of importance so that its distribution can be appropriately managed, accurate, and provide real benefits. According to Abdurrahman,¹⁶ it is necessary to keep developing zakat, which should not only be a social charity (social relations out of mercy). Furthermore, zakat also projects in the form of economic revival of change (generating the economy for a change); or, to borrow Agung Prihatna's term as an independent civil society.¹⁷

This research aims to determine and provide an understanding of the extent to which the LGBT community can be included as part of *mustahik*. Second aim is to find out the implementation of the *riqab* for the LGBT community, both its realization and the technical execution of zakat distribution. By understanding the importance of zakat as a social movement, a long-term perspective that disregards differences in sex (masculine-feminine) and their unclear gender status (or LGBT) is mediated through zakat distribution. For this reason, zakat should have a sense of building rather than only helping, as it has in the past. Zakat is used to change the status of "slave" to "freeman" with continuity and productivity efforts towards individuals or groups that need to be empowered and realizing changes in social status from a *mustahik* (zakat recipient) to *muzakki* (zakat giver).¹⁸ Therefore, this research contributes to increasing society's understanding towards the LGBT community as a part of society, supports them to return to their natural state in a *makruf* (persuasive) measure, and *bi al-hikmah* manner (presence of the government through policies) through zakat distribution.

LGBT is a term used since the 1990s that replaces the phrase "gay community" because the term is considered to represent a group that complements the term in more detail.¹⁹ LGBT consists of the following groups: 1) Lesbians: a group of women who are physically, emotionally, and mentally attracted to other women; 2) Homosexuals: a group of men who are physically and mentally attracted to other men; 3) Bisexual: a group of people who are physically, emotionally and spiritually attracted to the opposite sex and the same sex; 4) Transgender: a group of people who feel that their gender identity is different from their genital anatomy.

¹⁶ Moeslim Abdurrahman, *Islam Transformatif* (Jakarta: Pustaka Firdaus, 1995).

¹⁷ Andi Agung Prihatna, "Filantropi Dan Keadilan Sosial Di Indonesia," in *Revitalisasi Filantropi Islam, Studi Kasus Lembaga Zakat Dan Wakaf Di Indonesia*, ed. Chaedar S. Bamualim and Irfan Abu Bakar (Jakarta: Pusat Bahasa dan Budaya UIN Syarif Hidayatullah, 2005). See also Johan Gärde, "Concepts on Zakat, Caritas, and Diaconia in the Changing Social Welfare Landscape of Europe," *Journal of Religion & Spirituality in Social Work: Social Thought* 36, No. 1-2 (2017), p. 164-198.

¹⁸ Sofyan Hasan and Taroman Pasyah, "Legal Aspects of Zakat Empowerment In Indonesia," *Sriwijaya Law Review* 3, No. 1 (2019), p. 59. Farkhani, *Dari Mustahik Menjadi Muzakki* (Salatiga: Lembaga Penelitian dan Pengabdian Kepada Masyarakat, 2020).

¹⁹ Joke Swiebel, "Lesbian, Gay, Bisexual and Transgender Human Rights: The Search for an International Strategy," *Contemporary Politics* 15, No. 1 (2009), p. 19-35.

Therefore, they choose or not choose to have genital surgery in accordance with their desired gender identity.²⁰

All of the concepts described have one thing in common: they all seek pleasure, both physical and psychological, and they do so through relationships with the same sex rather than the opposite sex, as normal people do.²¹ However, not all of the group's activists agree on the acronym. The concept is part of the belief in "Lesbian and Gay Separatism," which holds that lesbian and gay groups should be kept apart.²² The acronym attempts to categorize various groups in one "grey" area, and its use implies that the issues and priorities of the groups represented are given equal attention. Intersex groups, on the other hand, want to be included in the LGBT group. The acronym LGBTI was later used in The Activist's Guide of the Yogyakarta Principles in Action.²³

Some transgender people, for example, have stated that the transgender and trans-sexual movement is not the same as the "LGB" movement.²⁴ Transgender is derived from two words: Trans, which means "to move" (hand, dependent) or "transfer," and Gender, which means "genitals." While terminologically, the term transgender describes people who do, feel, think, or look differently than the gender

²⁰ Elizabeth A. McConnell, et. al., "Multiple Minority Stress and LGBT Community Resilience among Sexual Minority Men.," *Psychology of Sexual Orientation and Gender Diversity* 5, No. 1 (2018), p. 1-12. Nils Karl Reimer, et. al., "Intergroup Contact and Social Change," *Personality and Social Psychology Bulletin* 43, No. 1 (2017), p. 121-136.

²¹ Montse Subirana-Malaret, et.al., "Intersectionality and Sex and Gender-Based Analyses as Promising Approaches in Addressing Intimate Partner Violence Treatment Programs among LGBT Couples: A Scoping Review," *Cogent Social Sciences* 5, No. 1 (2019). Rachel Behler, et.al., "Psychological Distress Transmission in Same-Sex and Different-Sex Marriages," *Journal of Health and Social Behavior* 60, No. 1 (2019), p. 18-35. Emily Kazyak, et.al., "Logics of Freedom: Debating Religious Freedom Laws and Gay and Lesbian Rights," *Socius: Sociological Research for a Dynamic World* 4, No. 1 (2018).

²² Sharon Marcus and Ruth Vanita, "Sappho and the Virgin Mary: Same-Sex Love and the English Literary Imagination," *Tulsa Studies in Women's Literature* 17, No. 1 (1998), p. 146. Mark Blasius, "An Ethos of Lesbian and Gay Existence," *Political Theory* 20, No. 4 (1992), p. 642-671.

²³ Sonia Onufer Corrêa and Vitit Muntarbhorn, "An Activist's Guide to The Yogyakarta Principles," 2007, http://yogyakartaprinciples.org/wp-content/uploads/2016/10/Activists_Guide_English_nov_14_2010.pdf; Senthorun Raj, "Once More with Feeling: Queer Activist Legal Scholarship and Jurisprudence," *The International Journal of Human Rights* 24, No. 1 (2020), p. 62-79. James Burk, "Theories of Democratic Civil-Military Relations," *Armed Forces Society* 29, No. 1 (2002), p. 7-29. Senthorun Raj, "Contested Feelings: Mapping Emotional Journeys of LGBTI Rights and Reforms," *Alternative Law Journal* 45, No. 2 (2020), p. 125-130.

²⁴ Gabriela Ramírez-Arroyo, et.al., "Relevance of the Voice in the Process of Gender Affirmation in Transsexual Women: A Cross-Sectional Study," *Salud Mental* 45, No. 3 (2022), p. 115-123. Yolanda Flores, "Science, Context, and Gender Fluidity in Public Policy," *Public Integrity* 23, No. 6 (2021), p. 595-609.

assigned to them at birth.²⁵ Transgender also refers to a person whose identity does not match the notion of male or female gender, but moves or combines both.²⁶ Dissatisfaction with the gender identity possessed by these transgender people then manifested in various behaviors, such as changes in the way they walk, talk, dress, and makeup, in an attempt to change gender.²⁷ Transgender people who undergo sex reassignment surgery are considered trans-sexual.²⁸ In other words, a transgender person is not always a trans-sexual; on the other hand, a trans-sexual is always a transgender person. For Indonesians, transgender is commonly referred to as *waria* (*wanita pria*).

This study is a normative legal study using the *maṣlāḥah mursalah* approach.²⁹ The data analyzed is literature from books of fiqh scholars, textbooks, scientific journals, and other sources. The aim is to learn more about the LGBT community and whether or not they can be included in the *riqab* category as a group. This study claims that the LGBT group has the right to receive zakat (*mustahik*), especially as a tangible step toward reclaiming their identity as human beings with the same rights as other humans as servants of Allah.

Transgender Historiography

LGBT is a part of the dynamics of sexual orientation that is as old as humankind. In the history of religions, this behavior is considered a cursed behavior. For example, the history of aberrant behavior carried out by the Sodomites and Amoro (Gomoroh) during the Prophethood of Lut AS. The account can be found in the historiography of the Qur'an concerning the life of sexual disorientation (QS. Al-A'raf: 80-81). Whereas in Christianity, it is said that "If a man sleeps (read: having sexual intercourse) with another man, like the intercourse of a man and a woman, then both of them have committed an abomination, undoubtedly both of them will be put to death, and their blood will fall on themselves" (Leviticus/Imamat, 20:13). In a 2016 speech, Pope Benedict XVI

²⁵ Gabriela Ramírez-Arroyo, et.al., *Relevance of the Voice in the Process of Gender...*, p. 115-123.

²⁶ Sam Winter, et. al., "Transgender People: Health at the Margins of Society," *The Lancet* 388, No. 10042 (2016), p. 390-400.

²⁷ Bethany Alice Jones, et. al., "Body Dissatisfaction and Disordered Eating in Trans People: A Systematic Review of the Literature," *International Review of Psychiatry* 28, No. 1 (2016), p. 81-94. Hailey A. Hatch, et. al., "Predictors of Transgender Prejudice: A Meta-Analysis," *Sex Roles* 87, No. 11–12 (2022), p. 583-602.

²⁸ Marta Bizic, et.al., "Sex Reassignment Surgery," *Medicinski Podmladak* 66, No. 1 (2015), p. 9-17. Alessia Celeste Bocchino, et. al., "The Role of a Multidisciplinary Approach in Gender Affirmation Surgery : What to Expect and Where Are We Currently?," (2022), p. 179-190.

²⁹ Juhaya S. Praja, *Teori Hukum dan Aplikasinya* (Bandung: Pustaka Setia, 2011).

referred to homosexual activity as a cursed behavior.³⁰ In the history of the Western world, the existence of transgender people was recorded for the first time by Hippocrates (469-377 BC), the figure referred to as the "Father of Modern Medicine".³¹ He also noted that there were several transgender identities used by the elite group.³² They were men with feminine characteristics and even preferred to dress in female attire.³³

Tracing back to Indonesian history shows that homosexual behaviors appeared in the Dutch East Indies in the 1920s. They began to settle in the major towns of the Dutch East Indies. Other sexual orientations, such as transgender, exist in addition to homosexuality. Gosse Kerkhof's dissertation, in *Het Indische Zedenschandaal: een colonial incident* (Moral Scandal in the Indies: a colonial incident), documented homosexual behaviors during the Dutch East Indies colonial era.³⁴ His research defended in 1938 at the University of Amsterdam, the Netherlands, uncovers a homosexual network involving high-ranking colonial politicians.³⁵ The theme of morality and sexuality among colonial officials was also written by Marieke Bloembergen³⁶ in her work *Polisi Zaman Hindia Belanda: Dari Kepedulian dan Ketakutan* and her article,³⁷ entitled Being Clean is Being Strong: Policing Cleanliness and Gay Vices in the Netherlands Indies, was published in a collection of writings entitled *Culture and Cleanliness*. Bloembergen's two studies demonstrate how, since the Moral Police task force was established in Java in 1925, issues of sexual orientation, namely homosexuality, had not been their primary concern. Because pedophilia was considered a felony in the Dutch East Indies,

³⁰ Adian Husaini, *Pluralisme Agama: Haram: Fatwa MUI Yang Tegas & Tidak Kontroversial* (Jakarta: Pustaka al-Kautsar, 2005).

³¹ Rizem Aizid, *Sejarah Terlengkap Peradaban Dunia* (Depok: PT. Huta Parhapuran, 2018).

³² Nadia, *Waria Laknat Atau Kodrat?* (Yogyakarta: Pustaka Marwa, 2005).

³³ Koeswinarno, *Hidup Sebagai Waria* (Yogyakarta: LKIS, 2004). Petra L. Doan and Lynda Johnston, *Rethinking Transgender Identities* (London: Routledge, 2022).

³⁴ Gosse Kerkhof, *Het Indisch Zedenschandaal: Een Koloniaal Incident* (Universiteit van Amsterdam, 1982).

³⁵ See also Eva Klinkenberg, "Romeo and Julius in the Tropics : The 1938 Zedenschandaal as a Case Study of the Intersection between Colonialism and Homosexuality in the Dutch Indies," 2021, [https://studenttheses.uu.nl/bitstream/handle/Bachelor Thesis Eva Klinkenberg 6294448 final.pdf?](https://studenttheses.uu.nl/bitstream/handle/Bachelor%20Thesis%20Eva%20Klinkenberg%206294448/final.pdf)

³⁶ Marieke Bloembergen, *Polisi Zaman Hindia Belanda: Dari Kepedulian Dan Ketakutan* (Jakarta: Penerbit Buku Kompas, 2009).

³⁷ "Being Clean Is Being Strong Policing Cleanliness and Gay Vices in the Netherlands Indies in the 1930s," in *Cleanliness and Culture: Indonesian Histories* (Den Haag: KITLV, 2011), p. 367.

according to Wetboek van Strafrecht article 292, homosexuality has not deemed a crime as long as it was not perpetrated on children under the age of 21.³⁸

According to the three articles that discuss the same event, uncovering the homosexual network in the Dutch East Indies at the end of the 1930s was a devastating blow to the colonial authorities who had always pushed for morality among the indigenous people. In the 1960s, the group began to show its existence on a small scale.³⁹ Then, in 1968, the transgender community became known to the Indonesian people by forming a transgender community organization. The transgender community became recognized by the Indonesian public in 1968 when a transgender community organization was formed. The transgender community got more assertive with establishing *Himpunan Wadam Djakarta* (HIWAD or the Djakarta Wadam Association) in 1969, with permission granted by the then-Governor of DKI Jakarta, Ali Sadikin.⁴⁰ *Wadam* is an abbreviation for *Hawa-Adam* or Eve-Adam. The male transgender community was also known as *bencong* or *banci*, an Indonesian derogatory term for shemale.

Wadam was renamed *waria* over time in response to Islamic concerns that the term "Wadam" is an abbreviation for "Eve-Adam," which is regarded exceedingly controversial since it contains the name of a prophet. From then, Alamsyah Ratu Perwiranegara, Minister of Religion during the Soeharto Era, coined the term "Waria" to replace "Wadam." Suharto, at the time, supported the name change with an official decision, later published in the Kompas daily news on June 07, 1978. Based on this decision, organizations that accommodate transgender activities, such as HIWAD in Jakarta, changed their name to *Himpunan Waria* (HIWARIA). The name change was followed by other organizations in cities in Indonesia, such as *Himpunan Waria Jawa Barat* (HIWAT) based in Bandung, *Ikatan Waria Yogyakarta* (IWAYO), and *Persatuan Waria Kotamadya Surabaya*

³⁸ Bloembergen, *Polisi Zaman Hindia Belanda : Dari Kepedulian Dan Ketakutan*.

³⁹ USAID and UNDP, "Being LGBT in Asia: Indonesia Country Report," 2014, p. 155, https://www.usaid.gov/sites/default/files/documents/1861/Being_LGBT_in_Asia_Indonesia_Country_Report.pdf.

⁴⁰ Hendri Yulius Wijaya, "Digital Homophobia: Technological Assemblages of Anti-LGBT Sentiment and Surveillance in Indonesia," *Indonesia and the Malay World* 50, No. 146 (2022), p. 52-72. Ferdiansyah Thajib, "Discordant Emotions: The Affective Dynamics of Anti-LGBT Campaigns in Indonesia," *Indonesia and the Malay World* 50, No. 146 (2022), p. 10-32. Chairun Nisya and Dwi Ardhanariswari Sundrijo, "Indigenisation of Global Norms: Norm Localization Analysis on LGBTQ+ Acceptance in Surabaya, Indonesia," *Salasika: Indonesian Journal of Gender, Women, Child, and Social Inclusion's Studies* 5, No. 1 (2022), p. 33-49.

(PERWAKOS).⁴¹ The organizations aim to provide a forum or place for the transgender community to socialize, interact and express themselves.⁴²

Transgender as *Mustahik*: A *Maṣlāḥah Mursalah* Perspective

Etymologically, *maṣlāḥah* is a form of *masdar* (adverb) derived from *fi'il* (verb) *shaluha*. In addition to its position as an adverb, *maṣlāḥah* is also an isim (noun), *mufrad* (singular) from the word *maṣāliḥ* (*jama'*, or plural). The Indonesian language has borrowed the word *Mashlahah* into *Mashlahah* and the words *manfaat* and *faidah* (benefit). Al-Buti confirms, in *Dawabit al-maṣlāḥah fisy Syari'ah al-Islamiyyah*, the term *maṣlāḥah* has a similar meaning to 'benefit' and also means valuable and good.⁴³ In his *Maqāshid*, Yusuf Hamid al-'Alim⁴⁴ separates the definition of *maṣlāḥah* into two parts: *majaziy* and *haqiqiy*. The antonym of *maṣlāḥah* is *mafsadah* (damage), and the two terms will never be used in the same sentence. *Maṣlāḥah's* *majaziy* meaning may be found in *ma'ajim al-lughah*, such as *al-muhith* dictionary and *al-Mishbah al-Munir*. While *maṣlāḥah* signifies *manfa'ah* or benefit, the definition of *haqiqiy* in question is *maṣlāḥah*. This is not the same as the meaning of *majazy*. In al-Mu'jam al-Wasith, Ibrahim Musthafa said that *al-Maṣlāḥah al-Shalah wan Nafi'* or *saluha as-Syai'* indicates useful or acceptable (*munashib*).⁴⁵

The knowledge of *maṣlāḥah* in a *majaziy* way is the certainty that humans benefit from their actions. While the truth is that in the act itself, there are benefits. However, al-'Alim⁴⁶ does not explain how to obtain these benefits. The notion of *mashlahah* being equated with benefit is also supported by other scholars such as Taufiq Yusuf al-Wa'iy⁴⁷ in *Bid'ah wa al-maṣlāḥah al-Mursalah*, Ahmad ar-Raisuni⁴⁸ in *Nazariyat al-maqāshid 'inda al Imām al-Syatibi and Al Ghazali*. All three have the same conclusion: *maṣlāḥah* is an expression of seeking something good while discarding something harmful and destructive (*mafsadah*) as part of the intent of the *shari'a* (*maqāshid shari'ah*). As for what is meant by the objectives of

⁴¹ Kemala Atmojo, *Kami Bukan Lelaki, Sebuah Sketsa Kehidupan Kaum Waria* (Jakarta: Temprin, 1986).

⁴² Siti Kurnia Widiastuti, "Problem-Problem Minoritas Transgender Dalam Kehidupan Sosial Beragama," *Jurnal Sosiologi Agama* 10, No. 2 (2017), p. 131-52.

⁴³ *Dawabit Al-Mushlahah Fi Asy-Sri'ah Al-Islamiyyah* (Beirut: Muassasah ar-Risalah, 2001).

⁴⁴ *Al-Maqashid Al-'Ammah Li Asy-Syari'Ah Al-Islamiyyah* (Herndon Virginia: The Internasional Institute of Islamic Thought, 1991).

⁴⁵ *Al-Mu'jam Al-Wasith* (Kairo: Maktabah asy-Syuruq ad-Dauliyyah, 2004).

⁴⁶ *Al-Maqashid Al-'Ammah Li Asy-Syari'Ah Al-Islamiyyah*.

⁴⁷ Taufiq Yusuf Al-Wa'i, *Al-Bid'ah Wa Al-Mashlahah Al-Mursalah, Bayanuha Ta'siluha Wa Aqwalu 'Ulama Fiha* (Kuwait: Maktabah Dar at-Turats, n.d.).

⁴⁸ Ahmad Al-Raisuni, *Nazariyat Al-Maqashid 'inda Al Imam Asy-Syatibi* (Herndon: Dar al-'Alami li al-Fikr al-Islamiy, 1995).

the *Shari'a*, there are five basic principles, namely 1) Protecting religion (*hifz ad-Din*), 2) Protecting the soul (*hifz an-Nafs*); 3) Protecting the mind (*hifz al-Aql*); 4) Protecting human sustainability (*hifz an-Nasl*); 5) Protecting wealth (*hifz al-Maal*). All things that protect the interests of the five principles above are *maślāḥah*, those that harm the interests of these five principles are *mafsadah*, and something that eliminates everything detrimental are *maślāḥah*.⁴⁹

The concept of *maślāḥah* as the purpose of *sharia* (*maqāshid al-shari'ah*) and *maślāḥah* as a method of legal *istimbath*, places it at the forefront of discussions of *uṣul fiqh* and Islamic law so that from its inception until now. Many Islamic thinkers have devoted all their energies to this concept.⁵⁰ Thahir ibn 'Assyria, a scholar born in Andalusia, Spain, who later migrated to Tunisia in the sixteenth century, for example, places *maślāḥah* above human nature. His viewpoint is based on Surah ar-Rum verse 30 and al-A'raf 119. However, according to an ahl fiqh scholar who is also a specialist in Quranic exegesis, maintaining human nature is part of *maślāḥah*. As a result, as long as it is in normal condition, Islamic law will never contradict human reason.⁵¹ On the other hand, the mind is more aqliy; it is the creation of humans with various relevant techniques through the application of reason.⁵²

Since human nature applies *syumuliyyah*, *sharia* as an entity that works with the fuel of *fitrah*, also relies on the generality (*syumuliyyah*) of God's law (*shari'ah*), whether it is *zamaniy* or *makaniy*. This means that it can break boundaries of ethnicity, race (including gender), and geographic areas.⁵³ The position of *maślāḥah* under *fitrah* is also confirmed by 'Alal al Fasi in his *maqāshid shari'ah* and ibn Sina whose opinion is quoted by al Hasaniy in his *Nazhariyah Maqāshid*. In the present day, the notion of *maślāḥah* is further developed and serves as the foundation for *ijtihad*, which is tailored to changing circumstances and current social dynamics.⁵⁴ Given the expanding reality, a more active and dynamic idea of *maślāḥah* is required.

⁴⁹ Wahbah Al-Zuhaili, *Uṣul Fiqh Al-Islamiy* (Beirut: Dar al-Fikr, 1987).

⁵⁰ Ahmad Al-Raisuni, *Nazariyat Al-Maqashid 'inda Al Imam Asy-Syatibi* (Herndon: Dar al-'Alami li al-Fikr al-Islamiy, 1995).

⁵¹ Muhammad Thahir ibn 'Asyur, *Maqāshid Asy Syari'ah Al Islamiyyah* (Malaysia: Daril Fajr, 1999).

⁵² Muhammad Thahir ibn 'Asyur, *Maqāshid Asy Syari'ah Al Islamiyyah* (Malaysia: Daril Fajr, 1999).

⁵³ Muhammad Thahir ibn 'Asyur, *Maqāshid Asy Syari'ah Al Islamiyyah* (Malaysia: Daril Fajr, 1999).

⁵⁴ Khalid Masud, *Filsafat Hukum Islam* (Bandung: Pustaka, 1996).

Contextualization of *Riqab* in the Distribution of Zakat for the LGBT Community

This study perceives LGBT or transgender as a social phenomenon, including not developing the review of Islamic law regarding the emergence of these deviant groups because Islamic law clearly defines them as opposing the sharia law.⁵⁵ Additionally, Quraish Shihab defines them as persons infected with a sickness requiring assistance and treatment from others.⁵⁶ This research focusses on reducing this behavior with a breakthrough, which, of course, has the economic benefit of empowerment through the distribution of zakat. By making this breakthrough, LGBT people has a chance to shift the direction of their lives and return to normalcy. Moreover, this breakthrough takes them out of the "grip" of Islamic law that they deserve to be punished.⁵⁷ Therefore, the *Maqāshidus Sharia* and *maṣlāḥah mursalah* approaches provide a firm foundation to restore their sexual disorientation to human nature (*fitrah*) and get them out of heinous acts (*fahisyah*) and *munkar* (legal bondage, sin).

Aspects of *Maqāshid Shari'ah*

In this study, the sharia (*maqāshid shari'ah*) is used to establish its laws for the benefit of humanity. Asy Syatibi, in his *Muawāfaqat* divides *maṣlāḥah* into three objectives, including *dharuriyah*, *hajiyyah*, and *tahsiniyyah*. First, *Dharuriyyah* (primary) are all things essential for human life, which consequently exist as an absolute requirement for the realization and goodness of human life, both in the world and the here after. If this *dharuriyah* does not manifest, human life will be an utterly extinct provision of food is an example of dhoruriyah. Second, *Hajiyyah* (secondary) is everything required to sustain the *dharuriyah* of human existence, ensuring happiness and prosperity while minimizing poverty. If not fulfilled, human existence will undoubtedly face challenges (*masyaqqah*), even if it would not go extinct. Third, *Tahsiniyyah* (tertiary) is a supplementary necessity that further improves human existence. If this last benefit is not realized, the benefit of

⁵⁵ Moch. Nur Ichwan, "Forbidden Visibility: Queer Activism, Shari'a Sphere and Politics of Sexuality in Aceh," *Studia Islamika* 28, No. 2 (2021). Ihsan Yilmaz, "Sharia, Legal Hybridity, and Islamization of Social Life," in *Authoritarianism, Informal Law, and Legal Hybridity* (Singapore: Springer Singapore, 2022), p. 113-138.

⁵⁶ Rustam Dahar Karnadi Apollo Harahap, "LGBT di Indonesia: Perspektif Hukum Islam, HAM, Psikologi dan Pendekatan Maṣlāḥah," *Al-Ahkam* 26, No. 2 (2016).

⁵⁷ Shanon Shah, "Constructing an Alternative Pedagogy of Islam: The Experiences of Lesbian, Gay, Bisexual and Transgender Muslims," *Journal of Beliefs & Values* 37, No. 3 (2016), p. 308-319.

human life is less attractive and delightful, even if it does not result in the loss of life.⁵⁸

The issue of LGBT is a social problem similar to other social problems, such as poverty, neglected children, and other social illness. All stakeholders must work together, including policymakers, researchers, and the community. The rise of LGBT needs to be taken seriously but wisely with breakthroughs. In solving the problem of whether LGBT persons have the right to recipients of zakat, it is necessary to review the context of the *nash* regarding the object of zakat recipients (*asnaf*). In Surahs at-Taubah verse 60 and an-Nur verse 33, Allah says: "Indeed, zakat (*alms-tax*) is only for the poor, the needy, for those employed to administer it, for those whose hearts are attracted 'to the faith,' for 'freeing' slaves, for those in debt, for (activities) in the way of Allah, and for needy travelers. This is a decree that Allah has commanded. Moreover, Allah is All-Knowing, All-Wise." (QS. al-Taubah: 60). "And those who cannot marry must keep their chastity so that Allah will bestow upon them His mercy. Furthermore, if your slaves wish to make a covenant (of freedom), then make a covenant with them, and give them some of the wealth of Allah which He has given you. And do not force your female slaves to commit prostitution while they want chastity because you only want to seek the benefits of worldly life. Whoever compels them; then indeed Allah is Forgiving, Most Merciful (to them) after someone coerces them." (QS. Al-Nur: 33).

The *nash* above is the basis for distributing zakat. In the present context, with various social problems, it opens the door to *ijtihad* for reinterpreting the text, especially regarding the distribution and utilization of zakat according to social needs and conditions. As previously stated, the notion of *maṣlāḥah* is the perfect foundation for the distribution of zakat to ensure accurate distribution.

Riqab is one of those mentioned in Surah at-Taubah verse 60 as the permitted recipient (*mustahik*) of zakat, which has been interpreted as "slave liberation" or prisoners of war justified by the sharia. Most of *madzhab* scholars agree that what is meant by the *riqab* is the *mukattab* enslaved person.⁵⁹ Meanwhile, Ridha views that the concept of *riqab* in the modern context is not only interpreted as a slave but has a broader context. For example, it could be interpreted as an effort to liberate a nation colonized by another nation if there was no one to liberate.⁶⁰ Furthermore, when individual slavery has ended, another slavery is more dangerous for humanity, namely the slavery of a nation in terms of thinking, economy, power,

⁵⁸ Faris Shalahuddin Zakiy, et.al., "Characteristics of Moslem Families Economy Based on Maqashid Sharia Perspective," *Journal of Islamic Economic Laws* 4, No. 1 (2021), p. 1-25.

⁵⁹ Al-Hafidz Syihab ad-Din Ahmad ibn Ali ibn Hajar Al-Asqalani, *Ibahaṭ Al-Ahkam: Syarh Bulughul Maram* (Beirut: Darul Fikr, 2004).

⁶⁰ Muhammad Rasyid Ridha, *Tafsir Al-Qur'an Al Hakim Syahir Bi Tafsir Al-Manar* (Beirut: Darul Ma'rifah, n.d.).

and sovereignty.⁶¹ Therefore, Syaltut gave a broader understanding of the more contextual meaning of the *riqab* by considering that slavery no longer exists.

In the context of zakat recipients or *mustahik*, LGBT can be included in the *riqab* category. In the context of the LGBT community, the meaning of *riqab* (slavery) is a group with complex social problems, either from individuals or as a result of their family or environment. According to *maqāshid sharia*, LGBT people fall into two categories: First, due to psychological and medical problems (hormonal disorders), *hifz an-nafs* (soul protection) require particular therapy by psychiatrists and medical treatment. Second, being in the wrong circle. Because they are bound in the chains of primordialism, which makes it impossible for them to return to their surroundings, *hifz an-nasl* (protecting the existence of human kind) is required by getting psychiatric treatment and spiritual treatment development.

According to Santoso,⁶² using the findings of a CIA survey and Topicmalaysia.com, the number of LGBT individuals in Indonesia is 3% of the overall population of 250 million people or around 7.5 million people. Indonesia ranks fifth, behind China, India, Europe, and America. USAID and UNDP⁶³ report 119 LGBT groups in Indonesia span over 28 provinces. Given this fact, the distribution of zakat for LGBT people as *hifz an-nafs is dharuriy* (urgent) or must be prioritised.

Priority of Zakat Distribution for LGBT People

The distribution of zakat to the LGBT community has unique characteristics, as it is focused on a long-term process rather than charity or pity (short term). Allah in at-Taubah 103 says: “Take from their wealth, O Prophet, charity (zakat) to purify and bless them and pray for them—surely your prayer is a source of comfort for them. Furthermore, Allah is All-Hearing, All-Knowing.” As stated in Allah's word above, two critical aspects of zakat distribution are cleaning and purifying *mustahik* (zakat beneficiaries). Those aspects are followed by the instruction to pray for them, demonstrating that zakat has a long-term continuity and is not just charity (mercy) with a short-term and instant process. In terms of distributing zakat to LGBT persons, God's mandate indicates that zakat, in the context of charity, can act as an empowering tool, including being utilized as a rehabilitation and therapy for LGBT individuals.

According to Socarides in Cory,⁶⁴ LGBT is neither congenital nor linked to genetic factors. Instead, it results from an intentional choice made through a way of

⁶¹ Mahmud Syaltut, *Islam Aqidah Wa Asy-Syari'ah* (Jakarta: Bina Aksara, 1984).

⁶² Meilanny Budiarti Santoso, "LGBT Dalam Perspektif Hak Asasi Manusia," *Share: Social Work Journal* 6, No. 2 (2016), p. 220.

⁶³ USAID, and UNDP, *Being LGBT in Asia...*, p. 1-15.

⁶⁴ Donald Webster Cory, *The Homosexual in America: A Subjective Approach* (New York: Greenberg, 1951).

thinking and in a conscious state. As a result, psychological disorders caused by misbehavior can be treated. Similarly, the psychological analysis stated that LGBT behavior could be cured through psychological therapy for those affected by the environment and hormonal treatment in hospitals for those who experience hormonal factors. In response to the background of LGBT people, it was caused mainly by wrong associations, which later became a habit.⁶⁵ A psychologist, Purwanta,⁶⁶ also supported that insight that the behavior can be reduced or eliminated, even though it is newly formed. Therefore, the distribution of zakat for persons suffering from social disorders can be directed toward medical and psychological healing

It does not end at the aspect of mental healing (*hifz al-nafs*) or because of the element of improper association (*hifz al-nasl*), but zakat distribution is required to restore them to the straight road in line with the commandment of *wa shalu 'alaih*. These attempts are parts of rehabilitating LGBT persons which are accompanied by mental and spiritual growth, spirit healing. Involving them in zakat distribution also restore their confidence through ongoing constructive activities, such as entrepreneurial activities to equip them with valuable skills, supply capital, and employment opportunities. Through the distribution of programmed zakat to LGBT persons, the objectives of sharia through zakat will be achieved, and a fundamental goal for LGBT persons to return to everyday life and provide various benefits, both to themselves and society.

Conclusion

This research found several important issues that led to the emergence of LGBT people and the application of Islamic law to social problems (*mu'āmalah*). First, there are two entities to distinguish the origins of LGBT people: entities caused by psychological and medical causes and entities caused by improper associations. Both the first and second require special rehabilitation, both medically and spiritually. Furthermore, it is followed by socio-spiritual entrepreneurial activities to continuously restore their self-confidence until they are ready to return to society. Second, new and developing societal problems have not been confirmed by law but contain benefits decided through *maṣlāḥah mursalah* that are only related to *mu'āmalah* and not to *'ubudiyah*. Third, *maṣlāḥah mursalah* as a legal technique is limited to *dharuriy* and *hajiyy* needs. Fourth, *Riqab*, which means "slavery," is no longer physically relevant to be interpreted as *mustahik*. For socio-cultural development, such as LGBT people, people with disabilities, street children, and so on, a broader and more relevant meaning is required. Fifth, zakat

⁶⁵ Rustam Dahar Karnadi Apollo Harahap, *LGBT Di Indonesia...*, p. 223-248.

⁶⁶ Edi Purwanta, *Modifikasi Perilaku Alternatif Penanganan Anak Berkebutuhan Khusus* (Yogyakarta: Pustaka Pelajar, 2012).

can be distributed as a unique and ongoing rehabilitation budget. Concerning the spread of LGBT, this research suggests the presence of government through zakat funds managed by BAZNAS, which are allocated to the LGBT rehabilitation budget. Therefore, the result of this research contributes the Ministries of Religion, Social Affairs, Health, and Manpower and other stakeholders to have a more contextual religious policy in distributing zakat to the LGBT community.

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